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 DAVID ROSARIO, :
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 Petitioner, :
 :
 -against- :
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 UNITED STATES OF AMERICA, :
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 Respondent. :
 - - - - -X

UNITED STATES OF AMERICA, :
 :
 Respondent. :
 - - - - - X

The Court is in receipt of a letter from petitioner David Rosario dated December 28, 2005. This letter purports to reply to the Government's opposition to Rosario's application for a certificate of appealability ("COA") from the Court's denial of Rosario's 28 U.S.C. § 2255 petition.

On December 27, 2005, the Court issued an Order denying the application for the COA. Rosario's letter arrived in Chambers after the Order was filed. In order to give Rosario a full opportunity to be heard, the Court takes up his December 28, 2005 letter in the context of his application for a COA.

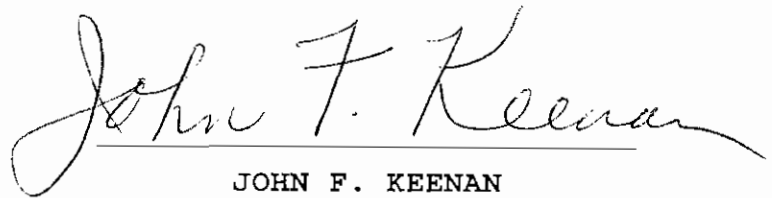
In essence, Rosario claims Brady violations and actual innocence which, in his view, supersede the fact that most of the claims in his § 2255 motion were time barred. These are new arguments not found in the § 2255 motion. As stated in the December 27, 2005 Order, the questions faced by the Court in ruling on an application for a COA are whether reasonable jurists would disagree with the Court's resolution of the § 2255 petition

and whether the issues in the petition require further pursuit. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). In its December 27, 2005 Order, the Court answered both of these questions in the negative. Rosario's new arguments do not persuade the Court otherwise.

Accordingly, the Court adheres to its December 27, 2005 Order in all respects. Rosario requests an evidentiary hearing on his constitutional claims. That application is denied.

SO ORDERED.

Dated: New York, New York
January 4, 2006

A handwritten signature in cursive script, reading "John F. Keenan". The signature is written in dark ink and is positioned above a horizontal line.

JOHN F. KEENAN
United States District Judge